

NORTH CAROLINA

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

WAKE COUNTY

This MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made by and between CAN AM SOUTH, LLC ("Plaintiff") and THE STATE OF NORTH CAROLINA ("the State"), THE NORTH CAROLINA DEPARTMENT OF HEALTH & HUMAN SERVICES ("DHHS"), and THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION ("DOA") and effective the date of the final signature below. The State, DHHS, and DOA may jointly be referred to herein as "the Defendants." The parties to this Agreement may be collectively referred to herein as "the Parties."

WHEREAS, a dispute has arisen between the Parties pertaining to real property owned by Plaintiff and leased to or by Defendants (the "Facility"), as further described in pleadings filed in the General Court of Justice, Superior Court Division, as case number 12 CVS 14873 filed in Wake County, North Carolina (the "Lawsuit"); and

WHEREAS, the parties to this Agreement desire to settle all controversies between them, subject to the Condition Precedent defined in paragraph 1 below;

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, the parties hereto represent and agree:

1. Nature of Agreement; Conditions Precedent. This Agreement is a mediated mutual release and settlement agreement that resolves the Lawsuit and any other disputes between and among the Parties, subject to the following condition precedent. Except as contemplated in subparagraphs 2(c) and 2(d) below, this Agreement is entirely premised upon the following conditions precedent (together, the "Condition Precedent"): (i) preparation of a final settlement and any incidental lease amendment(s) required thereby (collectively, the "Final Agreement") and (ii) the North Carolina Council of State's review and approval of any documents contained in the Final Agreement which require the Council of State's approval. The Parties shall use all due diligence to prepare the Final Agreement by May 15, 2015 and to seek Council of State approval at the next possible meeting.

2. Exchanges of Consideration. In consideration for the releases and other obligations contained in this Agreement, the sufficiency of which is hereby acknowledged:

(a) *Amendments to Leases and Other Commitments Regarding the Facility:* The following terms represent the Parties' new consideration relating to use and maintenance of the Facility, which shall be further evidenced in the Final Agreement:

(1) Lease Extensions: The DDS lease term expiring July 31, 2019 would be extended by lease amendment until July 31, 2024 (five years). The Department of Revenue ("DOR") lease term expiring December 31, 2017 would be extended until December 31, 2022 (five years). The DOR extension is, in effect, the early exercise of an existing lease option but is contingent upon successful completion of the improvements contemplated by items 2(a)(2) and

2(a)(5) below; and

(2) Mutually Agreeable Changes to Façade: Can Am, at its expense, will make improvements to the façade of the Facility in accordance with mutually agreeable plans for the purpose of making the Facility appear more professional. The improvements must be completed no later than December 31, 2015; and

(3) DDS Rent Escalator: Amendment of current DDS lease to provide for 3.00% annual rent escalator beginning August 1, 2019, consistent with similar terms in the Parties' other leases; and

(4) Roof Leaks: Can Am will hire a qualified roof consultant within 14 days of a final settlement agreement and promptly address existing and discovered roof problems in accordance with good architectural and roofing practices; and

(5) Other Mutually Agreeable "Fix-Up": Can Am will resolve the DOR climate control concerns in accordance with the advertised specifications of the governing lease in addition to façade and roof repairs addressed above, as well as other typical punch list items; and

(6) "Back fill" of the Facility: Upon successful completion of the improvements contemplated by items 2(a)(2), 2(a)(4) and 2(a)(5) above, the State will consider new proposals submitted by Can Am in response to the State's advertised needs for lease space on par with any responses to requests for proposals by prospective lessors in good standing with State, meaning that proposals submitted by Can Am will no longer be excluded from consideration by the State or otherwise impaired due to alleged poor performance under existing leases (which allegations are disputed by Can Am). Any new proposals submitted by Can Am will be subject to advertised lease specifications, applicable law, and customary State selection and review practices. The Parties acknowledge that any new proposals submitted by Can Am will be for the purpose of filling vacant space in the Facility formerly occupied by the State under the CSE lease and the ACTS lease; and

(7) Additional Option on the DDS Lease: In addition to the committed extension of the DDS lease term to July 31, 2024 contemplated by item 2(a)(1) above, in the amendment to the DDS lease the State shall be given one (1) three-year extension option in similar form to the lease extension options contained in the Parties' other leases. The amendment to the DDS lease will provide for 3.00% annual rent escalator during the three-year renewal option. Nothing in this Agreement may be construed as a commitment to exercise the DDS lease extension option.

(b) *Costs and Expenses*: Each party shall bear its own costs and fees incidental to this Agreement and the Lawsuit; and

(c) *Immediate Informal Stay*: The Parties agree to postpone all litigation activities and to immediately inform the Court that the matter has been settled. The Parties agree to take such other steps as may be reasonably required to ensure that the matter is removed from its current trial setting, including, if necessary, the filing of a voluntary dismissal without prejudice pending satisfaction of the Condition Precedent identified in paragraph 1 above; and

(d) *Dismissals of Pending Claims*: Upon satisfaction of the Condition Precedent identified in paragraph 1 above, Can Am shall file a dismissal with prejudice of all claims in the Lawsuit.

3. Mutual Releases. The Parties, for themselves and their agents, attorneys, successors and assigns, hereby releases each other from any and all claims, causes of action, actions, suits, debts, dues, demands, bonds, costs, attorney fees or interests recoverable, and any and all damages recoverable which they or any of their agents have, or may have either at law or equity, by reason of, arising out of, or relating to the Lawsuit, and the disputes underlying the same, including but not limited to, any and all claims which were or could have been raised in the Lawsuit (collectively, the "Released Claims"). The Parties forever discharge each other and their predecessors in interest, successors, assigns, affiliates, parents, agents, employees, managers, members, officers, board members, shareholders, representatives, insurers, and legal representatives from the Released Claims. The Parties covenant and agree that no assignment, transfer or conveyance in any manner of all or part of any legal right relating to the Released Claims has been made. This release is binding upon the Parties and their successors and assigns, and shall inure to the benefit of each party and its successors, assigns, affiliates, agents, employees and legal representatives.

4. No Admissions. The settlement contemplated by this Agreement is in compromise of disputed claims, and the compromises are not to be construed as admissions of liability on the part of any party. The Parties deny liability and intend merely to avoid litigation and buy their peace.

5. Enforceability; Authority of Parties and Signators. The Parties hereby represent to each other that they have the power and authority to execute and deliver this Agreement and that they have obtained all necessary authorizations to enter into this Agreement, that the execution of this Agreement does not violate any agreement to which it is a party, that this Agreement constitutes a legal, valid and binding obligation enforceable upon the Parties in accordance with its terms, regardless of the adequacy of consideration and that each signatory executing this Agreement on behalf of an entity has the authority to do so as a binding and legally enforceable act of such entity.

6. Entire Agreement; No Oral Modifications. This Agreement is not based upon any factual, legal, or other representation or promise made by or on behalf of either of the Parties not contained in this Agreement. The Parties acknowledge and agree that if the facts or law with respect to which this Agreement as executed are, or may be found hereafter to be, other than or different from the facts or law in that

connection now believed by either of the Parties to be true, the Parties expressly accept and assume the risk of such possible difference and agree that all provisions of this Agreement shall be and remain effective notwithstanding any such difference. This Agreement contains the entire understanding between the Parties regarding the subject matter hereof and supersedes any prior understanding or agreement between the Parties respecting such subject matter. There are no representations, arrangements, understandings, or agreements, oral or written, relating to the subject matter of this Agreement, except as fully expressed herein. The terms of this Agreement are contractual and not a mere recital. This Agreement may not be altered, amended, modified or rescinded in any way except by written instrument duly executed by the Parties.

7. Legal Representation; Right to Review; Intent to Release. The Parties acknowledge, represent and agree, each with the other, that (i) each has consulted with an attorney of their choice regarding this Agreement prior to the execution hereof, or had the opportunity to consult with an attorney; (ii) each attorney or party has been afforded a full opportunity to read, review and consider this Agreement; (iii) each attorney or party has had the opportunity to and has negotiated the terms of this Agreement; and (iv) no single party shall be deemed the drafter hereof for purposes of interpretation of any term; (v) they understand the terms of this Agreement; (vi) they knowingly and voluntarily waived the rights identified herein; and (vii) they have determined that entering into this Agreement is in their best interest.

8. Enforcement; Governing Law. The Parties agree that any dispute arising under this Agreement shall be heard exclusively in State courts having jurisdiction over Wake County, North Carolina. All questions concerning this Agreement and performance hereunder shall be governed by and resolved in accordance with the laws of the State of North Carolina.

9. Counterparts and Facsimile Signatures. This Agreement may be executed in multiple counterparts, with an executed counterpart being retained by each party hereto. Each counterpart shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The undersigned further agree that this Agreement may be transmitted between them by facsimile or e-mail signatures, and the Parties further intend that faxed or e-mail signatures constitute original signatures and that a faxed or e-mailed Agreement (whether one or more counterparts) containing the signatures (original, faxed, or e-mailed) of all the Parties is binding.

[THREE SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each party to this Mutual Release and Settlement Agreement has duly executed this document which is effective as of the last date signed by a party.

CAN AM SOUTH, LLC

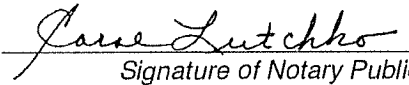
By: 
Title: Authorized Representative

STATE OF New York, COUNTY OF Broome

I certify that Douglas Matthews personally appeared before me this day and acknowledged the due execution of the foregoing document as the authorized representative of Can Am South, LLC.

DATE: May 7, 2015

CAROL LUTCHKO
Notary Public - State of New York
No. 01001642532
Commission Expires County
of Sullivan on 4/30/19
(SEAL)


Signature of Notary Public
CAROL LutchKo
Printed Name

My Commission expires: 4/30/19

STATE OF NORTH CAROLINA through the NORTH CAROLINA DEPARTMENT OF
HEALTH & HUMAN SERVICES

By: *Luke Hoff*
Print Name: Luke Hoff
Title: Director of Property & Construction Division

STATE OF NORTH CAROLINA, COUNTY OF WAKE

I, Manisha Pardeshi, a Notary Public for the County and State
aforesaid, do hereby certify that Luke Hoff, being authorized to do so,
personally came before me this day and acknowledged the due execution by him / her
of the foregoing instrument as Director (title) of the
Department of Health and Human Services of the State of North Carolina, for the
purposes therein expressed.

DATE: May 8th, 2015

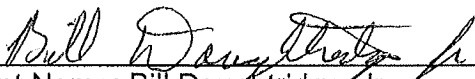
Manisha Pardeshi
Signature of Notary Public
Manisha Pardeshi
Printed Name

(SEAL)

My Commission expires: 04-09-2020



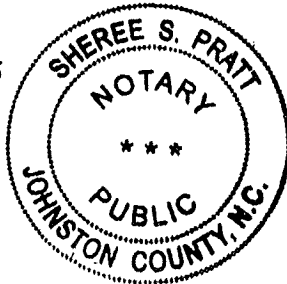
**STATE OF NORTH CAROLINA through the NORTH CAROLINA DEPARTMENT
OF ADMINISTRATION**

By: 
Print Name: Bill Daughtride, Jr.
Title: Secretary


STATE OF NORTH CAROLINA, COUNTY OF ~~WAKE~~ JOHNSTON

I, Sheree S. Pratt, a Notary Public for the County and State
aforesaid, do hereby certify that Bill Daughtride, Jr., being authorized to do so,
personally came before me this day and acknowledged the due execution by him of the
foregoing instrument as Secretary of the Department of Administration of the State of
North Carolina, for the purposes therein expressed.

Date: May 8, 2015




(SEAL)


Signature of Notary Public
Sheree S. Pratt
Printed Name

My Commission expires: Sept. 8, 2018

**THIS AGREEMENT HAS BEEN REVIEWED BY THE ATTORNEY GENERAL IN
ACCORDANCE WITH N.C.G.S. § 114-2.4.**

ROY COOPER, Attorney General

By: 
Assistant Attorney General